IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE NO. 204 OF 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge?

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COMMISSIONER OF INCOME TAX - Applicant(s)
Versus
MANJULABEN RAMLAL SHAH - Opponent(s)

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Appearance :
MR. TANVISH U. BHATT for Applicant(s).
MR. N.R. DIVETIA for Opponent(s).

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG
and
HONOURABLE MR.JUSTICE M.R. SHAH

Date : 27/07/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE R.S.GARG)

Mr.Tanvish U.Bhatt, learned Counsel for the Revenue, and Mr.S.N.Divetia, learned Counsel for the Assessee, are heard.

2. The Tribunal, at the instance of the Revenue, has made this Reference for our opinion on the following questions:

> *"Whether the Appellate Tribunal is right in law and on facts in holding that no part of the profit earned by the assessee on purchase and sale of gold bonds, can be considered as business income?"*

3. The facts necessary for disposal of the matter in a nutshell are that the assessee is an individual, the year of assessment is 1981-82. The assessee derived income as a partner from M/s. Dahyabhai Bapulal Shah. In the relevant Accounting Year, the assessee had purchased certain gold bonds, the maturity of which was 27th October, 1980. On the date of maturity, the assessee would have been entitled to gold, but, the assessee sold some of the gold bonds, which were before the date of maturity. Some gold bonds she returned and obtained gold. On sale of some of the gold bonds, she earned profit of Rs.33,655/. The assessee submitted to the Officer that the said profit was exempt from taxation. The Revenue raised an objection that present was not a case of simple purchase of gold bonds and its encashment

on the date of maturity, but, was a case of adventurous business tactics and as such, the money earned by the assessee on sale of the gold bonds in the open market was to be included in her returned income. The Tribunal, ultimately, held that the money earned by the assessee would be profit in her favour, but, in any case, the same being the income exempt from tax cannot be included in her income.

4. Mr.Tanvish Bhatt, learned Counsel for the Revenue, submits that from the very nature of the transaction and the manner in which the profit was earned, it would clearly appear that it was the business trip and in any case, it would not be exempted.

5. On the other hand, Mr.Divetia, learned Counsel for the assessee, submitted that if whole of the profit, which was to be received by the assessee, was exempt from tax, then, any profit earned by the assessee at the time of sale before maturity would also be exempted. His submission is that if whole of the profit is exempt, then part of it cannot become taxable. In support of his submission, he relied upon ***187 I.T.R. 316*** where in the matter of ***Ashok Kumar Jalan vs. Commissioner of Income-Tax***, the Bombay High Court has held that resale of the bond was allied to the assessee's usual trade or business

or was incidental to it. The High Court also observed that transaction of purchase and sale of National Defence Gold Bonds, 1980 did not amount to an adventure in the nature of trade and, therefore, the amount of Rs.33,500/- was not taxable.

6. In the present matter also, the transaction could not be taken to be an adventure in the nature of trade. Apart from this, we must accept the contention of Mr.Divetia that if whole of the profit receivable at the time of maturity is exempt from the mischief of the tax, then, any profit received intermittently or on sale of the gold bonds before their maturity would also be exempted. It would be fallacious to say that though full profit is exempt from tax, but, partial profit would be taxable.

7. In our considered opinion, the Tribunal was justified in holding against the interest of the Revenue. The Reference is answered against the interest of the Revenue. The Reference is accordingly disposed of. No costs.

[***R.S.Garg, J.***]

[***M. R. Shah, J.***]

*kamlesh**